

EXHIBIT D**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE HERALD, PRIMEO, AND THEMA
FUNDS SECURITIES LITIGATION

ECF Case

Case No. 09 Civ. 0289 (RMB)

This Document Relates to:

NEVILLE SEYMOUR DAVIS,

Case No. 09 Civ. 2558 (RMB)

Plaintiff,

vs.

[Proposed] Judgment

ALBERTO BENBASSAT, STÉPHANE
BENBASSAT, GENEVALOR, BENBASSAT &
CIE, GERALD J.P. BRADY, JOHN
HOLLIWELL, SONJA KOHN, DANIEL
MORRISSEY, PETER SCHEITHAUER, DAVID
T. SMITH, WERNER TRIPOLT, BANK MEDICI
AG, UNICREDIT SPA, HSBC INSTITUTIONAL
TRUST SERVICES (IRELAND) LTD., HSBC
SECURITIES SERVICES (IRELAND) LTD.,
HSBC BANK USA, N.A., HSBC HOLDINGS
PLC, PRICEWATERHOUSECOOPERS
INTERNATIONAL LTD.,
PRICEWATERHOUSECOOPERS (DUBLIN),
PRICEWATERHOUSECOOPERS LLP,
PRICEWATERHOUSECOOPERS BERMUDA,
THEMA ASSET MANAGEMENT LIMITED,
THEMA INTERNATIONAL FUND PLC, BA
WORLDWIDE FUND MANAGEMENT
LIMITED, PETER MADOFF, ANDREW
MADOFF, THE ESTATE OF MARK MADOFF,
WILLIAM FRY, JP MORGAN CHASE & CO.,
and THE BANK OF NEW YORK MELLON,

Defendants.

[PROPOSED] JUDGMENT

This matter having come before the Court for hearing, pursuant to the Order of this Court, dated _____ ____, 2011 (the “Preliminary Approval Order”), on the application of the Settling Parties for approval of the settlement (the “Settlement”) set forth in the Stipulation of Partial Settlement dated as of June 7, 2011, as amended and filed with the Court on June 17, 2011(the “Stipulation”), and the Court having approved the Settlement by Settlement Approval Order entered on _____ ____, 2011, after finding that adequate notice had been given to the Settlement Class (as defined in the Stipulation), all applicable requirements of Federal Rule of Civil Procedure 23 had been satisfied, and the Settlement is fair and reasonable in all material respects, and the Settling Parties having informed the Court that all conditions necessary for the entry of this Judgment have occurred or been waived in accordance with the Stipulation, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Judgment incorporates the Stipulation and all exhibits attached thereto as though fully set forth herein. All capitalized terms not defined herein shall have the same meanings as set forth in the Stipulation.

2. This Action is dismissed in its entirety and with prejudice as against the Settling Defendants. The Settling Parties will bear their own costs, except as otherwise provided in the Stipulation.

3. The Lead Plaintiff and every Settlement Class Member, on behalf of themselves, their successors and assigns, and any other person or entity claiming, now or in the future, through or on behalf of them, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties and shall have covenanted not to sue the Released Parties with

respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing or continuing to maintain any such Released Claim, either directly or indirectly or in any other capacity, in any jurisdiction, regardless of whether any such Releasing Party ever seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim, Release and Assignment, any distribution from the Net Settlement Fund.

4. Each of the Released Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of the Lead Plaintiff, Settlement Class Members, and Plaintiff's Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims.

5. In accordance with Paragraph 1.29 of the Stipulation, the term "Released Parties" means the Settling Defendants, HSBC Holdings plc, HSBC Institutional Trust Services (Ireland) Limited, HSBC Securities Services (Ireland) Limited and, in the event Lead Plaintiff's motion to amend the Amended Complaint is granted, HSBC Bank USA, N.A., as well as those entities' current and former subsidiaries, parents, principals, direct or indirect affiliates, including without limitation HSBC Bank USA, N.A. and HSBC Bank plc, general or limited partners or partnerships, successors and predecessors, heirs, assigns, officers, directors, agents, employees, fiduciaries, and attorneys.

6. In accordance with Paragraph 1.27 of the Stipulation, the term "Released Claims" means all claims, counterclaims, rights, causes of action, or liabilities of every nature and description, whether known or Unknown, whether arising under federal, state, common or foreign law, that were or could have been asserted in this Action or any other action in the United States or elsewhere in any jurisdiction throughout the world in which the Released Parties

are domiciled or otherwise subject to jurisdiction, by any Settlement Class Member, that arise out of, are based upon, or related to the allegations, transactions, facts, matters, or occurrences set forth or referred to in the Amended Complaint or the Proposed Amended Complaint concerning or relating to investments in the Fund, or that would be barred by *res judicata* or collateral estoppel if the claims asserted in the Action had been fully litigated on the merits to a final judgment in favor of the party against whom such claims were brought.

7. In accordance with Paragraph 1.43 of the Stipulation, the term “Unknown Claims” means any and all Released Claims which any of the Lead Plaintiff, Class Members or Settling Defendants does not know or suspect to exist in his, her or its favor as of the Effective Date and which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, including any Unknown Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiff and the Settling Defendants shall expressly waive, and each Settlement Class Member shall be deemed to have waived, and by operation of Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state of the United States, any principle of common law or any law of any foreign state, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and Settling Defendants acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement.

8. The Lead Plaintiff and each of the Settlement Class Members, whether or not they submit a Proof of Claim, Release and Assignment, shall by virtue of the Settlement Agreement and by operation of this Judgment have (1) irrevocably assigned and conveyed to the Settling Defendants all of their interest in any recovery by or benefit accruing to the Fund on account of current or future Fund litigation against the Settling Defendants or any of their affiliates, including without limitation the Fund's claims in *Thema Int'l Fund plc v. HSBC Institutional Trust Services (Ireland) Ltd.*, Record No. 2008/10983P, 2990/565TP, 2009/566TP (H. Ct.), pending in the Commercial Part of the High Court in Dublin, Ireland, and (2) delegated to the Settling Defendants, to the full extent permitted by applicable law, the power and right to act on their behalf in effectuating this assignment and in all matters relating to current or future litigation by the Fund against the Settling Defendants.

9. All persons and entities, including without limitation the Non-Settling Defendants, are permanently enjoined, barred and restrained from commencing, prosecuting or asserting any claims or actions for contribution, indemnity, or otherwise against the Settling Defendants seeking, as damages or otherwise, the recovery of all or any part of any liability, judgment or settlement which they pay or are obligated to pay or agree to pay to any member of the Settlement Class as a result of such persons' participation in any act, facts, statements or omissions that were or could have been alleged in the Action (whether under federal, state or foreign law or otherwise) as claims, cross-claims, counterclaims, third-party claims or otherwise, whether asserted in the Action in this Court or in any other court, arbitration proceeding, administrative agency or other forum, either in the United States or anywhere else in the world.

10. Any final verdict or judgment that may be obtained by Lead Plaintiff against the Non-Settling Defendants in the Action shall be reduced by the amount of the consideration paid

by the Settling Defendants pursuant to this Stipulation, or the amount that corresponds to the percentage of responsibility of the Settling Defendants, whichever is greater.

11. The finality of this Judgment shall not be affected, in any manner, by rulings that the Court may make regarding the applications by Plaintiff's Counsel for an award of attorneys' fees and reimbursement of expenses, or on the Plan of Allocation, including, without limitation, adjustments to Individual Claim Amounts.

12. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation for any reason, then this Judgment shall be vacated *nunc pro tunc* and, in such event, all orders entered, including those certifying the Settlement Class, and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

13. The provisions of this Judgment constitute a full and complete adjudication of the matter considered and adjudged herein. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

14. The Court retains jurisdiction for a period of six years from the date hereof with respect to implementation and enforcement of the terms of the Stipulation.

SO ORDERED:

Dated: _____, 2011

UNITED STATES DISTRICT JUDGE